

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BED BATH AND BEYOND, INC.,)	
)	
Plaintiff,)	
)	Civil Action No. 08-1182
v.)	
)	Judge William L. Standish
THE FOUNDRY AT SOUTH)	Magistrate Judge Lisa Pupo Lenihan
STRABANE, LLC,)	
)	
Defendant.)	

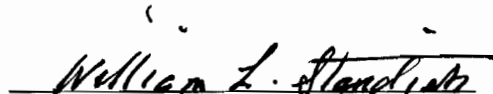
ORDER

AND NOW, this 31st day of March, 2009, the above captioned civil action was filed on August 25, 2008 and assigned to Magistrate Judge Lisa Pupo Lenihan. Plaintiff filed a Return of Service on December 10, 2008 (Doc. No. 5), indicating that Defendant's answer had been due on November 19, 2008. Based on Defendant's failure to file an answer, on January 6, 2009, Plaintiff filed a Request for Entry of Default (Doc. No. 6), as well as a Motion for Default Judgment (Doc. No. 7), and the Clerk of Court entered Default against Defendant on January 7, 2009 (Doc. No. 8). On March 9, 2009, Magistrate Judge Lenihan held a hearing on Plaintiff's Motion for Default Judgment. Thereafter, this member of the Court was assigned to the case, and the case was referred back to Magistrate Judge Lenihan for the issuance of a Report and Recommendation concerning Plaintiff's Motion for Default Judgment.

On March 12, 2009, Magistrate Judge Lenihan issued a Report and Recommendation (Doc. No. 13), recommending that as a result of Defendant's material breaches of the lease agreement entered into by the parties on July 11, 2006 (the "Lease") and Defendant's failure to meet the Delivery Date, Plaintiff has no obligation to pay any rent, taxes or common area charges as set forth and defined in the Lease until Defendant or its successor meets the terms of the

Delivery Date in the Lease. It was further recommended that Defendant or any party who assumes the Lease is obligated under the terms of the Lease to repair all defects at the property that is the subject of the Lease such that Plaintiff may lawfully resume normal business operations, and Plaintiff may exercise all rights under the Lease to enforce this obligation. Finally, it was recommended that judgment be entered in favor of Plaintiff and against Defendant in the amount of \$3,923,084 with costs to be taxed against Defendant. The parties were advised that any objections to Magistrate Judge Lenihan's recommendations had to be filed in writing within ten (10) days of the date of service of the Report and Recommendation.

No objections have been filed, and, after a review of the pleadings and other documents in the case, as well as the Report and Recommendation of Magistrate Judge Lenihan, it is hereby ORDERED that the Report and Recommendation dated March 12, 2009 (Doc. No. 13) is adopted as the Opinion of the Court, and Plaintiff's Motion for Default Judgment is GRANTED.


William L. Standish
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

Counsel of record.